

U.S. Senate
Republican Policy
Committee

Don Nickles, Chairman
Kelly D. Johnston, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

No. 2

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S. 1 — Unfunded Mandate Reform Act of 1995

Calendar No. 12

Reported from the Committee on Governmental Affairs on January 9, 1995, with technical amendments, by a vote of 9 to 4. Reported from the Committee on the Budget on January 9, 1995, with amendments, by a vote of 21 to 0. A joint hearing was held on January 5, 1995. No committee reports were filed. However, Governmental Affairs Committee Chairman Roth filed a statement in the January 9, 1995 *Congressional Record*, see page S-646. Budget Committee Chairman Domenici is expected to file a statement on behalf of his committee by close of business today.

NOTEWORTHY

- Opening statements on S. 1 may begin as early as Wednesday morning. At press time, no unanimous consent agreement to limit debate had been reached.
- The bill requires the Congressional Budget Office (CBO) to prepare estimates of the cost of federal mandates on state, local, and tribal governments and on the private sector.
- The bill provides a 51-vote point of order in the Senate to lie against consideration of any legislation (other than matters within the jurisdiction of the appropriations committees) that imposes federal mandates if the total cost imposed by the bill on state, local, and tribal governments is \$50 million or more, or if the total cost imposed by the bill on the private sector is \$200 million or more, unless the CBO statements are published by the committee before Senate consideration, and unless the bill contains funding proposals to cover the direct compliance costs of state, local, and tribal governments.
- S. 1 provides that if annual appropriations are inadequate to meet the increased costs of intergovernmental mandates imposed by the bill, then either the mandate expires or the agency must impose lower levels of mandates to match the level of appropriations, as provided by the mandate legislation.
- The bill also requires federal agencies to include cost/benefit estimates in proposed or final regulations that impose costs of \$100 million a year or more on state, local, and tribal governments.
- The House is expected to take up an almost identical bill, H.R. 5, before the end of January.
- Strengthening amendments may be offered to the bill on the Floor by Republican senators. Democratic senators are expected to offer numerous amendments, including adding a sunset provision and eliminating federal funding for intergovernmental mandates whenever governments compete with the private sector.

BILL SUMMARY

A bill similar to S. 1 was introduced during the 103d Congress as the "Community Regulatory Relief Act of 1993" (S. 993) by Senator Kempthorne on May 20, 1993. S. 993 was reported by the Governmental Affairs on August 10, 1994, and placed on the Senate Calendar, but Floor consideration was not possible before the end of the 103d Congress due to numerous amendments proposed by Democratic senators. As of January 9, S. 1 has 59 cosponsors, of whom 49 (not counting the prime sponsor, Senator Kempthorne) are Republicans.

Congressional Consideration of Costs of Federal Mandates

CBO Required to Prepare Statements

- The bill imposes the following requirements on the CBO, **effective for legislation introduced on or after January 1, 1996** [Senator Grassley amended S. 1 in Budget Committee to be effective for all legislation **considered** after January 1, 1996], with respect to all bills and joint resolutions other than appropriations bills:
 - **Intergovernmental Mandates:** CBO must prepare a statement including estimates of the direct costs that will be incurred by State, local, or tribal governments in complying with the federal mandates imposed by the bill ("intergovernmental mandates"). If the Director of the CBO determines that the direct costs of the intergovernmental mandates in the bill will be below \$50 million annually, he must say that in his statement to the committee on the bill and include a brief explanation.

If he determines the direct costs of compliance with the federal intergovernmental mandates to be \$50 million or more per year, he must include the following estimates:

1. Total direct costs of the Federal intergovernmental mandates, broken out on an annual basis over the five-year period beginning with the first year the mandate becomes effective; and
2. Any increase in the bill in authorization of appropriations for federal financial assistance programs usable by the states, local governments, and tribal governments to offset the mandates.

- **Private Sector Mandates:** CBO must estimate the direct costs of federally imposed private sector mandates in each bill. If the Director determines that the direct costs will be below \$200 million per year, then he shall so state with an explanation. If the Director determines the direct costs of compliance with the federal private sector mandates to be \$200 million or more, he must include the following estimates:
 1. Total direct costs of the Federal private sector mandates, broken out on an annual basis over the five-year period beginning with the first year the mandate becomes effective; and
 2. Any increase in the bill in authorization of appropriations for Federal financial assistance programs usable by the private sector for activities subject to the Federal private sector mandates.
- **Other Studies Requested by Committees:** At the request of congressional authorizing committees, the CBO must undertake detailed budgetary, economic, and financial studies on proposed legislation that may have significant federal mandate costs on State, local, or tribal governments ("intergovernmental mandates") or on the private sector. If reasonably feasible to do, the Director shall estimate: the future costs of Federal private sector mandates beyond the five-year time period; any disproportionate budgetary effects on any particular regions or types of communities; and the effect of the private sector mandates on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.
- The bill repeals section 403 of the Congressional Budget Act of 1974, which requires the CBO to provide estimates of the cost of the bills to State and local governments. The repeal is effective January 1, 1996.
- The bill authorizes \$4.5 million per year for Fiscal Years 1996 through 2002 to carry out the new requirements.

Committee Reports to Include CBO Estimates and Financing Statement

- Each committee report accompanying legislation that imposes a Federal mandate must contain a statement prepared by the committee that includes:
 - a description of any federal mandates in the bill and the expected direct costs of the mandates to state, local, and tribal governments, and to the private sector;

- a qualitative assessment of the costs and benefits of the Federal mandates, including their anticipated costs and benefits to human health and safety and protection of the natural environment; and
- a statement of the extent to which Federal payment of public sector costs would affect the competitive balance between state, local, or tribal governments and privately owned businesses.
- If the bill contains intergovernmental mandates, then the committee statement must also contain:
 - a statement of the Federal financial assistance available under existing Federal financial assistance programs or authorized by the bill for activities of state, local, or tribal governments subject to the Federal intergovernmental mandates in the bill;
 - a statement of whether the intergovernmental mandates are partly or entirely unfunded, and the committee's reasons for that intention; and
 - identification of any existing sources of funding of Federal financial assistance that may assist the state, local and tribal governments in meeting the direct costs of the mandates.
- The committee must state the extent to which the reported legislation preempts state, local, or tribal law, and if so, why.

Provides a Senate Point of Order

- A majority (51-vote) point of order will lie in the Senate against consideration of any bill, joint resolution, motion, amendment, or conference report (other than matters within the jurisdiction of an appropriations committee) that contains a Federal unfunded mandate, unless:
 - the bill that is reported by the committee contains the estimates required of the CBO with respect to direct compliance costs of the bill's Federal mandate on state, local, and tribal governments and on the private sector; and
 - if the federal mandate is an intergovernmental mandate in excess of \$50 million in annual direct cost, the legislation has provided full funding to the state, local, and tribal governments by way of:
 1. an increase in entitlement spending with a resulting increase in the Federal budget deficit; or

2. an increase in direct spending paid for by an increase in tax receipts; or
3. an increase in authorization of appropriations, which must include a grant of flexibility to the responsible federal agency to implement less costly mandates in the event less than adequate funding is appropriated in any year to cover the costs of the intergovernmental mandate, or the committee must provide that the mandate will not be in effect.

Categories of Laws Exempted from the Bill's Requirements

- Section 4 of the bill exempts from the requirements of this bill any legislation or regulation that implements the following categories of Federal mandates:
 - Federal civil rights laws;
 - individual Constitutional rights;
 - Federal requirements to prevent waste, fraud, and abuse in grant programs;
 - emergency assistance or relief requested by state, local or tribal governments;
 - national security/ratification of international treaties; and
 - bills designated by the President as emergency legislation that the Congress also so designates in statute.

Federal Agencies Estimate Costs of Intergovernmental Mandates

- Federal regulatory agencies must include an economic impact analysis in each Notice of Proposed Rulemaking and Final Rule that includes any intergovernmental mandates that are estimated to result in an annual aggregate expenditure in excess of \$100 million in any one year by State, local, and tribal governments and the private sector.
 - The agency statement must include estimates of the direct cost of compliance with the federal intergovernmental mandates on state, local and tribal governments and the private sector, including the availability of federal funds to pay for those costs;
 - The agency statement, shall include, "if an to the extent that the agency determines that accurate estimates are reasonably feasible:"
 1. an estimate of future costs of the intergovernmental mandate, including any disproportionate budgetary effects on any particular regions of the United States, particular governments or other types of communities;

2. qualitative, and if possible, a quantitative, assessment of costs and benefits anticipated from the Federal intergovernmental mandates, including enhancement of public health and safety and protection of the natural environment;
3. the effect of the Federal private sector mandate included in the intergovernmental mandate on the national economy, including the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services; and
4. a description and summary of the comments by state, local, and tribal governments, and by other affected parties, along with an evaluation by the agency of those comments and a statement supporting the agency's decision to impose the intergovernmental mandates.

Judicial Review Prohibited

The bill specifically prohibits judicial review of any CBO, committee or federal agency statement prepared pursuant to the bill.

New Commission to Study Intergovernmental Mandates

- The bill creates a "Commission on Unfunded Federal Mandates" to study Federal intergovernmental mandates and make recommendations to the President and the Congress regarding additional flexibility for compliance, reconciling contradictory mandates, terminating or consolidating duplicative or obsolete mandates, and temporarily suspending costly mandates not vital to public health and safety. A preliminary report is due within nine months of the date of enactment, with a final report three months later.
- The bill authorizes \$1 million to the 9-member Commission for the study.

COST

Federal Government

On January 9, 1995, the Director of the CBO sent a letter to the committee in which CBO estimated the bill, as ordered reported by the Committee on Government Affairs, would authorize \$4.5 million for the CBO for Fiscal Years 1996 and beyond, increasing CBO's Fiscal Year 1996 appropriation to \$27.7 million, an increase of 19 percent. The CBO

estimated that the proposed funding was adequate to meet CBO's new duties under the bill. The CBO also estimated the Commission would cost \$1 million in Fiscal Year 1995. The CBO determined that the bill would not affect direct spending or receipts, and that pay-as-you-go procedures would not apply to the bill.

State and Local Governments

In addition, the CBO determined that passage of the legislation would impose no costs on state and local governments.

POSSIBLE AMENDMENTS

Nickles/Domenici. To require Federal agencies to estimate, if reasonably feasible, the effect of the regulation's mandates on the private sector for all proposed rules and final rules that will require an expenditure of \$100 million or more per year by the private sector. [This amendment is similar to the amendment offered by Senator Nickles to S. 4, the National Competitiveness Act. The Nickles amendment was adopted by the Senate by voice vote on March 9, 1994.]

Domenici. To strike the provision in the bill that exempts independent regulatory agencies from having to prepare the cost estimate statements on intergovernmental mandates.

Gramm. To increase the point of order waiver vote requirement from a simple majority to a three-fifths majority.

Levin. Sunset in 1998.

Glenn. To exempt Floor amendments that impose intergovernmental mandates from the point of order that the amendment does not provide Federal funding to cover direct costs.

Glenn. Delete provisions requiring CBO to analyze Federal mandate costs on the private sector.

Unknown. To eliminate intergovernmental mandate funding in cases where there is competition between the public and private sectors, e.g., municipal waste collection.

Unknown. To exempt labor, "special populations," environment, and /or minimum wage legislation.

Staff Contact: Mark Whitenton, 224-2946